

Immigration and Naturalization Service, Justice

§ 341.2

birth, adoption, marriage, death, and divorce certificates.

(Approved by the Office of Management and Budget under control number 1115-0018)

[52 FR 19719, May 27, 1987]

§ 341.2 Examination upon application.

(a) *Personal appearance of applicant and parent or guardian*—(1) *When testimony may be omitted.* An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if the Service officer adjudicating the case has in the Service administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship, or if the application is accompanied by one of the following:

(i) A Department of State Form FS-240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten-year period to the applicant as a citizen of the United States, or

(iii) The applicant's parent(s)' naturalization certificate(s).

(2) *Testimony required.* Each applicant, when notified to do so, shall appear in person before an officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant, unless one is unavailable and the district director is satisfied that the applicant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. At the examination the applicant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to review and rebut any adverse evidence on file, and to cross-examine witnesses called by the Government.

(b) *Witness*—(1) *Personal appearance.* A witness shall be called to testify under oath or affirmation at the district director's option only if that person's testimony is needed to prove a particular point, and only if alternative proof is unavailable or more difficult to produce than is the witness.

(2) *Substitution and waiver.* When testimony is deemed necessary by the district director and the presentation of the person or persons through whom citizenship is claimed is precluded by reason of death, refusal to testify, unknown whereabouts, advanced age, mental or physical incapacity, or severe illness or infirmity, another witness or witnesses shall be produced. A substitute witness also may be produced in lieu of such person if such person is a member of the United States Armed Forces serving outside the United States in an area where his testimony could not be taken without imposing extreme hardship upon him, or without unduly delaying action on the application, and no issue is present which can be resolved only by this testimony.

(c) *Proof.* The burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.

(d) *Assignment and authority of officer.* A district director shall assign an officer of the Service to conduct the examination provided for in paragraphs (a) and (b) of this section. The assigned officer shall have authority to administer oaths or affirmations; to present and receive evidence; to rule upon offers of proof; to take or cause to be taken depositions or interrogatories; to regulate the course of the examination; to examine and cross-examine all witnesses appearing in the proceedings; to grant or order continuances; to consider and rule upon objections to the introduction of evidence; to make a report and recommendation to the district director as to whether the application shall be granted or denied, and to take such other action as may be appropriate to the conduct of the examination and the disposition of the application.

(e) *Conduct of examination.* The assigned officer shall, at the commencement of the examination of the claimant or the acting parent or guardian, advise them of their rights as set forth in paragraphs (a) and (f) of this section, and shall interrogate them under oath or affirmation with regard to each assertion made in the application and any other matter pertinent to the

§ 341.3

claim to citizenship; in addition, when a witness is deemed necessary, he shall interrogate each witness with regard to pertinent matters within the personal knowledge of the witness, such as the relationship between the claimant and the citizen source or sources; the citizenship of the latter, and any possible expatriatory acts performed by the claimant and the citizen source or sources. He may, in his discretion, have a transcript made of the testimony. At the conclusion of the examination of the claimant or the action parent or guardian, all corrections made on the applications form shall be consecutively numbered and recorded in the space provided therefor in the form. The affidavit shall then be signed and sworn to or affirmed by the claimant or the acting parent or guardian; and the remainder of the affidavit completed and signed by the assigned officer.

(f) *Representation during proceedings.* The claimant shall have the right to representation during the proceedings, as provided in part 292 of this chapter, and such representative shall have the right to examine and cross-examine witnesses appearing in the proceedings; to introduce evidence; to object to the introduction of evidence, which objections shall be stated succinctly and entered on the record, and to submit briefs. If the claimant is not represented by an attorney or representative, the assigned officer shall assist him in the introduction of all evidence available in his behalf.

(g) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the applicant and any witnesses produced by the applicant or by the Government and present evidence pertinent to the applicant's claim to citizenship. The officer of the Service assigned to conduct the examination under this part may take such part in the proceedings as he may deem necessary.

[30 FR 5472, Apr. 16, 1965; 30 FR 5621, Apr. 21, 1965, as amended at 32 FR 6260, Apr. 21, 1967; 45 FR 84011, Dec. 22, 1980; 51 FR 35629, Oct. 7, 1986; 66 FR 32147, June 13, 2001]

8 CFR Ch. I (1-1-02 Edition)

§ 341.3 Depositions.

If satisfied that a witness whose testimony is essential is not available for examination in the United States, the assigned officer may authorize the taking of a deposition abroad by written interrogatories before an officer of the Service or a United States consular official.

§ 341.4 Surrender of immigration documents.

Each claimant shall surrender any immigration identification and permanent resident cards in his or her possession.

[30 FR 5472, Apr. 16, 1965, as amended at 63 FR 70316, Dec. 21, 1998]

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall report his/her findings and recommendation by completing the Report and Recommendation section of the Form N-600 application, or by formal order, as appropriate. The record, including the report and recommendation, shall be submitted to the district director, who shall sign the report either approving or disapproving the recommendation.

[50 FR 39649, Sept. 30, 1985; 50 FR 41480, Oct. 11, 1985]

§ 341.6 Denial of application.

If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to